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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States District Court, Northern District of California, Southern Division, entered on the 24th day of May, 1957, is reported at 155 F. Supp. 315, and reprinted in the record (R. 65). The opinion of the Court of Appeals affirming the District Court is reported at 256 F.2d 429, and reprinted in the record (R. 85).

JURISDICTION.

The judgment of the Court of Appeals was entered on May 12, 1958. The petition for writ of certiorari was filed on August 11, 1958, and was granted on October 13, 1958. The jurisdiction of this court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED.

Section 2, Fourth, and Eleventh of the Railway Labor Act, Title 45 U.S.C., Section 152 (Fourth and Eleventh), are set forth in the appendix hereto.

QUESTIONS PRESENTED.

1. Whether under the Railway Labor Act, as amended (45 U.S.C., 151 et seq.), a railroad carrier and a labor union may negotiate restrictions in a check-off agreement limiting the statutory right of revocation of wage assignments for union dues by individual employees who have terminated membership in the union.

2. Whether under the Railway Labor Act, as amended (45 U.S.C., 151 et seq.), individual employees, who have terminated membership in the union, may be barred by the terms of a check-off agreement between a carrier and a labor organization from exercising their statutory right to revoke their wage assignments except on a form which has been "reproduced and furnished" by the union.

STATEMENT.

Petitioner and others similarly situated are employed by respondent Southern Pacific Company, hereinafter referred to as "carrier" (R. 4). They were formerly members of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "BRT" or "union" (R. 6).

Effective August 1, 1955, the carrier and the BRT entered into a dues deduction agreement providing for deduction of BRT dues and other fees by the carrier upon written wage assignment authorizations executed by BRT members (R. 74-80). On or before February 1, 1956, petitioner and others similarly situated executed wage assignments in the form prescribed by the dues deduction agreement (R. 6, 35, 62). In compliance with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh), the wage assignments provided in part as follows (R. 78-79):

> "This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

More than a year after the execution of their assignments, petitioner and others resigned and terminated their membership in the BRT (R. 17, 23, 36). At the time of their resignations, these employees submitted written revocations of their wage assignments both to the carrier and to the BRT (R. 6, 20-21,

23-24). The written revocations submitted by the petitioner and others to the carrier and the BRT were identical to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79-80).

Although the revocations were in writing as required by the Railway Labor Act and were in the identical form of the revocation "form" attached to the check-off agreement, the carrier and the BRT refused to honor them on the ground that the provisions of the check-off agreement required revocations to be on forms "reproduced and furnished" by the BRT (R. 24-33, 36, 62-63). No contention was advanced that the revocations actually submitted in any way failed to comply with the provisions of the Railway Labor Act or were otherwise defective in any manner (R. 24-33, 36, 63).

The carrier advised that it would continue to deduct dues and pay them over to the BRT although petitioner and others had terminated their membership in the union (R. 7-8, 36, 63, 68).

This action was brought on behalf of petitioner and others similarly situated for appropriate injunctive relief and a determination that the dues deduction agreement, as interpreted and applied by the parties thereto, is invalid and a violation of the Railway Labor Act. The material allegations of the complaint were admitted in the answers filed by the BRT and by the carrier (R. 35-37, 62-64). The facts not being in dispute, petitioner and the BRT moved for summary judgment (R. 46-47, 59-61).

The District Court was of the opinion that it was not enough that the employee submit a revocation of his wage assignment in writing as provided by the Railway Labor Act. It held that a revocation required "some sort of orderly procedure" and that while the requirement that a form be secured from the BRT as a condition precedent to revocation was "a bit arbitrary," it was "no burden" and was "a reasonable compliance" with the Railway Labor Act (R. 69).

The Court of Appeals for the Ninth Circuit affirmed the District Court judgment (without discussing the issues) on the ground that it considered the trial court's appraisal of the case to be correct. 256 F.2d 429, 430 (R. 87).

The action involves an alleged infringement by the respondent carrier and the respondent union of rights guaranteed individual employees by the Railway Labor Act. No administrative remedy exists since the controversy does not involve interpretation of the agreement and the parties thereto are in accord as to its interpretation and application. The action, therefore, is within the exclusive jurisdiction of the Federal District Court. *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768; *Mount v. Grand International Brotherhood of Locomotive Engineers*, 6 Cir., 226 F.2d 604; *Brotherhood of Locomotive Firemen and Enginemen v. Mitchell*, 5 Cir., 190 F.2d 308.

SUMMARY OF ARGUMENT.

I.

Section 2, Fourth of the Railway Labor Act contains an absolute ban on all deductions of dues and other monies from the wages of employees and payment thereof by a carrier to a labor organization. This section is modified by Section 2, Eleventh, to the extent of permitting such deductions only under the conditions therein specified.

Any exception to the prohibition of Section 2, Fourth of the Act such as is contained in Section 2, Eleventh, must be strictly construed within the terms of the permissive grant of Congress. Cf. *Louisville & Nashville Co. v. Mottley,* 219 U.S. 467, 479, 31 S. Ct. 265, 269 (1911); *Addison v. Holly Hill Fruit Products, Inc.,* 322 U.S. 607, 611, 64 S. Ct. 1215 (1944). Both the language of the statute and its legislative history establish that the policy of Congress in enacting Section 2, Eleventh was to reserve to the individual employee the absolute right and discretion to authorize or revoke a dues deduction assignment. Any attempt to condition or limit this right by agreement between carriers and unions is in excess of statutory authority.

II.

The deductions from petitioner's wages and payment thereof by the carrier to the union after petitioner had revoked his wage assignment authorization were involuntary contributions to a labor organization

by means of a check-off agreement. Such contributions constitute unlawful assistance to the union by the carrier in violation of Section 2, Fourth of the Act. *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 63 S. Ct. 1214 (1943).

III.

The enforcement of respondents' dues deduction agreement against petitioner for the period following his termination of membership in the BRT, when he owed it no "dues," was unlawful. As so applied and interpreted by the respondents, their dues deduction agreement is in direct violation of the terms of Section 2, Eleventh (c) of the Act.

IV.

Assuming that a carrier and a labor organization may prescribe the form of writing to be used in revoking a wage assignment, the record provides no justification for the carrier's refusal to honor petitioner's revocation, since he complied with the dues deduction agreement by executing a timely revocation in the exact form prescribed therein.

The complete irrationality of and absence of support in the record for respondents' grounds for refusing to recognize the revocation shows that the purported requirement of obtaining a form "reproduced and furnished" by the union is a purposeful contrivance to enable the union to harass, delay and ultimately discourage petitioner and others similarly

situated from revoking their wage assignments. By such action, control over petitioner and others is sought to be perpetuated in derogation of their right to full freedom of association and designation of their collective bargaining representatives, all in violation of the Act.

ARGUMENT.

I.

THE RAILWAY LABOR ACT PROHIBITS ALL DEDUCTION OF DUES FROM WAGES WHERE THE EMPLOYEE HAS REVOKED IN WRITING HIS AUTHORIZATION FOR SUCH DEDUCTION OR HAS TERMINATED HIS MEMBERSHIP IN THE ASSIGNEE LABOR ORGANIZATION.

A. Where Congress Has Created an Exception to an Otherwise Absolute Statutory Ban, the Exception Must Be Strictly Construed and May Neither Be Expanded nor Contracted by Agreement Between Private Parties.

Section 2, Fourth, of the Railway Labor Act, as amended (45 U.S.C. 152, Fourth), insofar as it deals with a check-off of dues,[1] provides:

> "It shall be unlawful for any carrier . . . to deduct from the wages of employees any dues, fees, assessments or other contributions payable to labor organizations."

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[1]The full text of Section 2, Fourth, and Eleventh, is set forth in the appendix.

Aware of past abuses of the check-off to coerce employees into lending financial support to carrier-dominated or favored unions,[2] Congress sought by means of the all-inclusive prohibitions of Section 2, Fourth, to return the choice of union membership and method of contribution thereto to the individual employee, unencumbered by any restraining agreements entered into by the carriers and labor organizations. Cf. *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592 (1937); *Brotherhood of Railroad Shop Crafts etc. v. Lowden*, 86 F.2d 458 (10th Cir., 1936), cert. denied 300 U.S. 659, 57 S. Ct. 435.

Section 2, Eleventh, of the Railway Labor Act (45 U.S.C. 152, Eleventh) excepts certain check-off agreements from the above proscription. Therefore, the sole authority for the instant agreement must be found, if at all, within the exceptions of that section. It is manifestly apparent from the express language of this provision of the law that the validity of a dues deduction revocation is conditioned only by the requirement that the assignment "shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

The provisions of the Act lend no authority whatever to the proposition that the employee can be limited to a particular form of notice of revocation or

[2] Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, 81st Cong., 2nd Sess. (1950) at pp. 19, 20.

that he can be restricted to procurement of a form from a particular union. Under the section, any written notice by the employee which contains a clear direction to revoke his wage assignment is in compliance with the Railway Labor Act. The Act is precise in requiring only that the revocation be written, thereby excluding oral revocations.[3] There is a clear distinction between such a limited authorization for check-off inclusion in a collective bargaining contract and a broad grant of authority to employers and unions permitting them within their discretion to lay down conditions as to how such check-offs and revocations thereof shall be accomplished.[4]

Despite the apparent lack of basis in the plain mandate of the provision, the carrier and the BRT persisted in their argument to the lower courts that they were entitled to negotiate between themselves "reasonable" restrictions on revocation of wage assignments. In view of the explicit and mandatory provisions regarding revocation, it would appear that this argument should be addressed to Congress, not to the courts. Since Congress did not see fit to authorize exceptions other than those listed, reasonable or otherwise, it is not the function of the courts to supply them. See *Louisville & Nashville Co. v. Mottley*, 219 U.S. 467, 469, 31 S. Ct. 265, 269 (1911), where this court declared:

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[3]Hearings cited in Footnote 2, supra, at 74.

[4]Cf. *Braddom v. Three Point Coal Co.*, 288 Ky. 734, 157 S.W. 2d 349 (1941); see also *Shine v. John Hancock Mut. Life Ins. Co.*, 76 R.I. 71, 68 A.2d 379 (1949), based on state statute.

> "The court cannot add an exception based on equitable grounds when Congress forbore to make such an exception."

See, also, *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 611, 64 S. Ct. 1215 (1944), where the court refused to dilute the word "all" to mean "substantially all." See *State of Utah v. Montgomery Ward & Co., Inc.*, 120 Utah 320, 233 P.2d 685 (1951), for a similar construction of a state statute held to conflict with congressional policy.

Also persuasive in sustaining petitioner's position in this regard are those cases arising under the sections of the Labor Management Relations Act which provide protection to individual employee choice as does Section 2, Eleventh (a) of the Railway Labor Act.[5] There, labor unions and employers sought by means of private legislation in collective bargaining to read further restrictions into the words "tender of dues and initiation fees," just as the BRT and the carrier in this case now attempt to engraft limitations on the words "revocable in writing." The courts were not, however, lulled into thinking that these "reasonable" restrictions were authorized by Congress. Thus, when unions and employers attempted to expand upon the meaning of the LMRA proviso by insisting that payment of dues be made only at a union meeting,[6]

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[5]Sections 8(a)(3) and 8(b)(2), Labor Management Relations Act, 1947, 29 U.S.C. §158.

[6]*NLRB v. Aluminum Wkrs. Int. Union*, 230 F.2d 515, 518 (7th Cir., 1956).

restricting the period of resignation from the union,[7] requiring initiation into membership as a condition precedent to paying dues,[8] or requiring attendance at union meetings,[9] the courts and the National Labor Relations Board rejected such attempts as being legally untenable and in excess of the congressional mandate, which required only the tender of dues and initiation fees.

Undoubtedly, each of the above restrictions could find justification on some basis of "orderly procedure," if that were the issue, but the plain fact is that they were firmly rejected as having no binding authorization in the law, without reference to the "orderly procedure" question. Yet this is the very position the carrier and the BRT would urge upon this court when they maintain that the limitation in their check-off agreement was a reasonable restriction and "no burden" on the employee. This argument misconceives the entire question since it assumes that any restrictions are permissible, if "reasonable."

Further, the argument ignores the realities of industrial life. As the cases cited immediately above demonstrate, any restriction upon individual freedom in excess of the statutory and constitutional limita-

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[7] *Marlin Rockwell Corp.*, 114 NLRB 553, 562 (1955): "Nor can it [the Board] interpret such employee action in terms of either a bargaining agreement language or that in an intraunion membership contract. For to do so would disregard the provisions of Section 7 of the Act."

[8] *United Brotherhood of Carpenters, etc., Local 824*, 115 NLRB 518 (1956).

[9] *Union Starch and Refining Co.*, 87 NLRB 779; enforced 186 F.2d 1008 (7th Cir., 1951); cert. denied 342 U.S. 815.

tions thereon is *per se* burdensome, and to refuse an employee's written revocation of a dues assignment unless it is submitted on a form "reproduced and furnished" by the union poses an immediate obstacle to his exercise of freedom of choice guaranteed to him by law. By such provisions, the employee, who either has already terminated his membership in the union or desires to do so, must solicit the grace of the union to furnish him a "form" reproduced by it in order to terminate the payment of his "dues." He is not free to exercise his statutory right of withdrawal without delay and without debating the wisdom of his decision with the very union officials from whom he wishes to sever all connections.

In the instant case, the BRT, although it had petitioner's revocation in proper form in its possession on the date provided for submission of such revocations to the carrier, refused to send it to the carrier. Instead, petitioner was advised that he would have to wait at least another month to be released from his wage assignment, and then only if he obtained and made out another identical revocation form differing only in that it was printed by the BRT (R. 25). While petitioner was thus forced to cool his heels at the whim of the BRT, further deductions were made from his wages and paid to the BRT, although admittedly he had terminated his membership in that organization and did not owe any "dues" to it. While these events were transpiring, he was told that the BRT "hoped" that he would "reconsider" (R. 25). By this conduct, the BRT exposes as its real purpose an effort to gain time for union persuasion and to

unlawfully discourage revocations, while at the same time requiring of the petitioner continued financial support to a union which is no longer authorized to receive it.[10]

It is well settled that enforcement of an unlawful check-off agreement interferes with the full freedom of association and the right to collective bargaining by employees. *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 63 S. Ct. 1214 (1943); *Safeway Stores, Inc.,* 111 NLRB 968 (1955); *The Englander Co., Inc.,* 114 NLRB 1034 (1955). Yet, by imposing further restrictions upon the expressed statutory exceptions, respondents attempt to accomplish by indirection that which is prohibited them directly, thereby coercing the petitioner into making contributions against his will.

To sustain the decision of the District Court is to amend the Railway Labor Act and engraft provisions thereon of an indefinite nature which Congress did not see fit to enact. This judicial grant of discretion to carriers and unions will inevitably be extended by whatever requirements they may subsequently devise in the name of orderly procedure, since a union's substantial interest lies in devising a maze of restrictions to discourage individual employees from dues revocations. The judicial expansion of such power will not go unnoticed. Just as in the National Labor Relations Board cases, supra,[11] other means will be sought to

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[10]Cf. *Fisher v. Stevens Coal Co.,* 143 Pa. 115, 17 A.2d 642 (1941); *Horn v. $1,950.00,* 184 Pa. 321, 132 A.2d 376 (1957).

[11]Footnotes 6, 7, 8 and 9, supra.

tighten union check-off agreements so as to exercise a veto on the individual employee's right of revocation and free selection of another collective bargaining representative.

B. The Legislative History of Section 2, Eleventh, Discloses No Authority for Carrier-Union Negotiation Restricting the Right of Revocation, but Rather Sustains Petitioner's Position That the Right Is Absolute in the Individual Employee.

As shown above, Section 2, Fourth, of the Railway Labor Act, as amended in 1934, was absolute in prohibiting all checking off of dues to any labor organization until 1951 when Congress adopted Section 2, Eleventh, expressly modifying Section 2, Fourth, and permitting the check-off of dues to the limited extent therein set forth. The legislative history of that section shows that Congress intended that the operation of the check-off system should be subject to the exclusive discretion and control of the individual employee rather than permitting it to be the subject of negotiation and regulation by agreement between carriers and labor organizations.

Noteworthy in this regard is the fact that the bills upon which hearings were held in Congress preceding enactment of Section 2, Eleventh,[12] enabled carriers and labor organizations to enter into collective

[12] S. 3295 as introduced is printed in Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, on S. 3295, p. 1, 81st Cong., 2nd Sess. (1950). H.R. 7789 as introduced is printed in Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 7789, p. 1, 81st Cong., 2nd Sess. (1950).

bargaining agreements providing for the check-off system. However, contrary to the final legislative product, neither bill, as originally introduced, required that the individual employee give his assent to the deductions from his wages. Thus, there was a meaningful shift in legislative design in the final enactment of the legislation.

Most significant is the fact that the individual authorization was initially suggested by the national legislative representative of respondent BRT, Mr. Harry See. In the following exchange between See and Senator Donnell,[13] the meaning of written authorization and the scope of the authority given to unions and carriers in this connection is made eminently clear:

> "Sen. Donnell. I was very much interested in observing your view that the check-off provision should be predicated upon individual authorization by the employee.
>
> "I understand you to mean by that that you think it would be advisable that the bill . . . should not merely provide that the carrier and the union could make an agreement by which the carrier would be authorized to check off the dues and pay those dues over to the union, but that the right to make that check-off should be conditioned upon the authorization by the individual affected that the check-off might be made. . . .
>
> * * *
>
> "Do you think, Mr. See, that it would be advisable that this language in your amendment

[13] Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, on S. 3295, 81st Cong., 2nd Sess. (1950), at pp. 73-74.

'upon individual authorizations' should be defined a little more definitely as to what those authorizations should consist? That is to say, written authorizations or a written assignment, or whatever legal document might be necessary.

"Do you not think it would be well to have written in here that it should be done upon the written authorization of the employee rather than just the expression 'individual authorization'?

* * *

"That protects both parties. He knows what he signed presumably, and the company knows what it is that it has been authorized to deduct.

"Mr. See. That is true. I couldn't imagine any authorization for the purpose of that kind that wouldn't be written. But maybe it would be all right to put that language in the proposal.

"Sen Donnell. . . . I cannot imagine a railroad that would deduct anything from an employee's payroll unless it had it in writing. It would be better, would it not, in the statute itself to say that it should be in writing, and thereby both parties, the carrier would know it had the right to require it in writing, and the employee would know that he would be justified in agreeing that it should be in writing.

"Mr. See. I think that would be right."

It is of interest to note that when Senator Donnell spoke of "both parties", he explicitly referred to the carrier and the individual employee. Noticeable by its absence is the suggestion that the union has any part, as an assignee beneficiary of the dues deduction, in negotiating conditions upon the assignment of the employee's wages or the revocation thereof. Rather,

it is clearly envisioned that the only necessary parties to such a transaction would be the individual employee and the carrier. If it were not so, the bill as originally constituted would have sufficed without amendment.

Senator Taft and other members of the committee did not feel that the bill, as originally introduced, afforded adequate protection to the individual employees, such as was at that time contained in the Labor Management Relations Act.[14] Therefore, subsequent to the reporting of the bill and prior to debate on the matter, Senator Taft and Senator Hill incorporated the amendments to the bill which made the wage deductions dependent upon the individual authorizations of the employees rather than upon the terms of the collective bargaining agreements between the carriers and the labor organizations.[15] Senator Hill, manager of the bill, explained the effect of the bill as amended to members of the Senate who were concerned about the rights of the individual employees.[16]

> "The bill would also permit a carrier and a labor organization duly authorized to represent employees under the Act to enter into agreements providing for the check-off from wages of employees of periodic dues, initiation fees and assessments. But no such agreement is to be effective with respect to any individual employee

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[14] Supplemental Views of Senators Taft, Smith and Donnell S. Rep. No. 2262, 81st Cong., 2nd Sess., 1950. See also 96 Cong. Rec. 16267; Section 302(c)(4) LMRA, 1947, 29 U.S.C. §186.

[15] 96 Cong. Rec. 15735.

[16] 96 Cong. Rec. 15736-15737.

unless first authorized in writing by him to the employer.

"Mr. Lucas. Is it not a fact that it is *absolutely within the discretion of the employee* as to whether he requests the check-off?

"Mr. Hill. It is wholly and entirely within the discretion of the employee, and unless the employee sits down and *writes on a piece of paper* an authorization to the employer to turn dues, fees and assessments over to the labor organization and signs his name to the authorization, there is no check-off so far as the employee is concerned.

* * * *

"In other words, before a single penny can be deducted from the salary of the individual employee for the normal dues or assessments, he must give a written assignment to the company, so that it can pay that money to the union. *Then he has a right, within a year, to revoke that assignment if he does not like the way it works, or if he wants to put an end to the deduction.*" (Emphasis added.)

Similarly, when the bill reached the House its sponsors were careful to point out the protection afforded individual employees through the right of revocation.[17]

Finally, Vice President Barkley, in explaining the provisions prior to a final vote, reiterated the absolute right of the individual to revoke his assignment:[18]

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[17] See Comments of Mr. Wolverton, 96 Cong. Rec. 17051.

[18] 96 Cong. Rec. 16260.

> "It also provides that if the agreement is entered into, there may be a check-off provided the individual employee himself gives his consent in writing for the check-off, and *the employee has a right* at the end of one year's time, or at the termination of the particular agreement, *to withdraw his consent to any check-off.*" (Emphasis added.)

Thus, at each stage of the proceeding, from initial suggestion, to debate, to final vote, it was emphasized that the absolute right to authorize the deductions and to withdraw consent therefrom was to be retained in the individual employee alone. There is not one iota of authority for respondents' position that the beneficiary of the assignment, to wit, the union, can privately legislate by collective bargaining with the carrier the terms of the revocation or condition the withdrawal in any way.

Therefore, the purported requirement that as a condition precedent to revocation the petitioner first obtain a form "reproduced and furnished" by the BRT has no basis in the law and is void as a deterrent upon petitioner's exercise of his right of withdrawal.

C. Deductions Made After Receipt of the Individual Employee's Written Revocation are not Authorized by the Employee and are, therefore, Involuntary Deductions Constituting Unlawful Assistance to the Union by the Carrier.

The basis of petitioner's contentions in this area is that, apart from any other considerations, continued

deductions after the employee has given written notice of revocation to the employer constitute unlawful assistance to the union.

If the instant case were one involving the carrier's coercing the employees into lending financial support to the union by means of a compulsory signing of a dues deduction authorization, there can be no doubt that such action would be absolutely void. *Virginia Electric & Power Co. v. NLRB; Safeway Stores, Inc.; The Englander Co., Inc.*, supra. Petitioner submits that there is no material difference in result between the case of initially coerced contributions and the enforced continuance of dues deductions against the will of the assignor.

In both instances there occurs at some point in the proceedings, whether initially or subsequently, a time when consent to the deduction is not freely given; at that time the deduction cannot be regarded otherwise than as a forced contribution to the union. Any private agreement which fosters such a result prevents the employee from making a free and untrammelled disposition of his wages and is to that extent void.[19]

Petitioner's contention that the carrier in refusing to recognize the individual employee's revocation rendered unlawful support to the union is sustained by analogy in a recent Administrative Decision of the General Counsel of the National Labor Relations

[19]Cf. *Braddom v. Three Point Coal Co.*, Footnote 4, supra; *Chabot v. Prudential Ins. Co.*, 77 R.I. 396, 75 A.2d 317 (1950) based on explicit state statutes).

Board.[20] In that decision the evidence disclosed that certain employees had submitted to their employer timely and otherwise valid revocations of their dues check-off authorizations. The employer, however, refused to recognize the validity of the revocations, continued to deduct dues from the wages of the employees and transmitted the dues to the union. The General Counsel concluded that the company, by refusing to honor the check-off revocations submitted by the employees, interfered with and restrained the employees in the exercise of their rights to full freedom of association. The General Counsel further ruled:

> "Moreover, the continued deduction of dues after receipt of valid check-off revocations and the payment of such monies to the union, constituted unlawful support within the meaning of Section 8(a)(2)."

The salient points of coincidence between the above decision of the NLRB General Counsel and the instant case are apparent. It is undisputed in the instant case that the revocation was otherwise timely and in the prescribed form (R. 24), but the BRT, without attempting to disclose how it is able to interpose its will into an arrangement by which the individual directs the carrier to dispose of certain of his wages in a prescribed manner, combined with the carrier to cause the revocations to be rejected, with the only reason given by the BRT being:

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[20] Administrative Decision of the General Counsel of the NLRB, Case No. K-604, made public August 9, 1956.

"We do not recognize any revocation cards except those reproduced by our organization." (R. 30)

Drawing upon the analogy of the NLRB General Counsel's decision under a statute almost identical in language[21] and the same in purpose to Section 2, Fourth, of the Railway Labor Act, the continued deduction by the carrier of petitioner's dues constitutes unlawful support within the meaning of Section 2, Fourth.

D. When The Employee has not Only Revoked His Previous Authorization, but has Terminated His Membership in The Union, Any Further Deduction of Dues and Payment Thereof to That Union is a Direct Violation of Section 2, Eleventh(c) of the Railway Labor Act.

Section 2, Eleventh (c) is explicit in requiring that "no agreement made pursuant to subparagraph (b) [the authorization of dues deduction agreements] of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees or assessments payable to any labor organization other than that in which he holds membership."

Petitioner withdrew from the BRT at the time he revoked his dues assignment (R. 7, 23, 36). When respondents relied upon their agreement to justify their continued deductions from petitioner's wages thereafter, they were by that act applying and enforcing

[21] LMRA, Section 8(a); 29 U.S.C. §158(a).

an agreement which is expressly made unlawful by Section 2, Eleventh(c) of the Act. Moreover, a further provision of Section 2, Eleventh(c) accords freedom to petitioner to join another labor organization meeting the requirements of the law. To the extent that the dues deduction agreement between respondents places restrictions upon the free exercise of petitioner's decision to revoke his dues assignment and join another labor organization, that agreement is violative of Section 2, Eleventh(c).

One of the objectives of Section 2, Eleventh(c) has been held to be the protection of employees from "dual unionism in an industry with high job mobility." *Pennsylvania Ry. vs. Rychlik,* 352 U.S. 480. However, if the union is allowed to negotiate restrictions on the right of revocation which, as in the present case, operate so as to continue financial support to the union although the individual has terminated his affiliation with that union and joined another, dual unionism is then fostered by the agreement.

Further, Section 2, Eleventh(c) allows the deductions to be made *only* for "periodic dues, initiation fees, and assessments." Since petitioner is no longer a member of the union, he does not owe the union for any period thereafter, any amount as dues, initiation fees, and assessments. Therefore, the deductions after termination of membership are made for a purpose other than those specified in the statute and the continuation of deductions by the carrier is absolutely void notwithstanding any agreement between the carrier and the union to the contrary.

As was aptly stated in *Fisher v. Stevens Coal Co.*, 143 Pa. 115, 17 A.2d 642, 646 (1941):

> "Plaintiff having voluntarily withdrawn his membership in the United Mine Workers of America, at the time of earning the wages from which the one ($1) dollar dues was deducted by defendant company, plaintiff was no longer a member of the United Mine Workers of America and owed it no dues. United Mine Workers could not have collected from the plaintiff. The defendant company, agent of the plaintiff, having had notice of the withdrawal of plaintiff, had no legal right as such agent to deduct from plaintiff's wages dues which were not owing by him."

The instant agreement is likewise invalid as applied by the parties thereto in requiring contributions which were not due the union. It is to be noted that the *Fisher* case, *supra,* further supports petitioner's contention that the relationship formed by the check-off agreement is personal to the individual and the employer, a principal-agent relation, on which the union, only a beneficiary thereof, cannot impose conditions.

II.

ASSUMING THAT A CARRIER AND A LABOR ORGANIZATION MAY PRESCRIBE THE FORM OF WRITING TO BE USED IN REVOKING A WAGE ASSIGNMENT, THE RECORD PROVIDES NO LAWFUL JUSTIFICATION FOR RESPONDENTS' REFUSAL TO HONOR PETITIONER'S REVOCATION.

A. Petitioner has Complied with the "Dues Deduction Agreement" by Executing a Revocation "in the Form Agreed upon by the Parties."

It is an afterthought to suggest that "orderly bookkeeping procedures" justified refusal of petitioner's written revocation in the exact form prescribed by the agreement unless it was also submitted on a form which had been printed by and obtained from the BRT. This is effectively demonstrated by the conduct of the carrier in this case. The carrier, having received petitioner's written revocation along with others (in the identical form provided in the dues deduction agreement), believed that it should be honored. Accordingly, the carrier's representative promptly wrote to the Secretary-Treasurer of the BRT Local to that effect, saying:

> "The attached Wage Assignment Revocations are being forwarded to you . . . as you will undoubtedly wish to show the same on the list to be furnished on or before the 5th of April, 1957, as the names of employees from whose wages no further deductions are to be made." (R. 28-29.)

The carrier saw no bookkeeping problem when it wrote to the BRT and only changed its position after protest by the BRT. Prior thereto the BRT admit-

tedly had been notified by petitioner of the termination of his membership in the union (R. 7, 24, 36). In addition, the BRT had in its possession not one, but two revocation forms executed by petitioner. One of these forms had been submitted directly to the BRT (R. 23-24, 67), the other sent by petitioner to the carrier for inclusion on the list of "employees from whose wages no further deductions (were) to be made." (R. 28-29, 67.) In this situation, the fact that these revocations were not on forms printed by the BRT is obviously totally unrelated to any administrative paper work required, and neither the carrier nor the BRT so claimed of record. No attempt was made to show how yet a third form would elicit any further information not already in the union's or the carrier's possession, and, indeed, none can be made.

The dues deduction agreement itself merely prescribes that "revocation of the authorization shall be in the form agreed upon by the parties." (R. 74-75.) Despite this fact, however, the BRT persisted with its claim that under Section 1(c) of the dues deduction agreement, no revocation form was valid unless it had been "reproduced and furnished" by that organization. While it would appear that Section 1(c) was inserted only for the purpose of relieving the company of expenses and obligations in the administration of the check-off, the BRT insisted that this section of the agreement not only divested the company of any such responsibility it might have, but also granted to the BRT the exclusive control of the revocation procedure as against the individual employee

(R. 30). The company then agreed with this contention (R. 7, 12, 63).

The result is that the parties have construed the agreement not only as determining their responsibility *inter se,* but also as engrafting limitations on the statutory right of individual employees to submit written revocations of their wage assignments. This is a position that respondents have failed to show any basis for other than specious claims of orderly bookkeeping procedure and prevention of forgeries.

No claim was made in the record of this case that any forgery was involved in petitioner's termination of membership. Presumably the carrier could detect a forged signature on a revocation form as easily as it could detect a forged endorsement on a pay check. Obviously, the matter of who printed the blank revocation of dues forms has nothing to do with detection of a forged revocation and is just another unfounded attempt at justifying after the fact the unwarranted interference with what is under the law an individual decision.

B. The True Purpose of the Restriction Insisted upon by Respondents is to Discourage Revocations; the Restriction is, Therefore, Contrary to the Law and is not Binding upon the Petitioner.

The complete irrationality of the restriction makes plain that its real purpose was unlawfully to discourage revocations. The intent to delay and frustrate the employee's individual rights can be observed by this record, and by the admissions contained on page

11 of the BRT brief in the Court of Appeals.[22] Without attempting to show from whence such authority was derived, the BRT stated there that the restriction claimed to be a part of its dues deduction agreement was designed to enable the BRT to make sure that the revocation "is the result of a considered decision by the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced."

The Railway Labor Act plainly does not contemplate that a union with a financial interest and a desire for perpetuation shall determine whether the employee's revocation represents his "considered decision." Congress made it eminently clear by the prohibitions of Section 2, Fourth that individual rights to free association were not to be interfered with. *Virginian Ry. Co. v. Systems Federation No. 40, supra; Brotherhood of Railroad Shop Crafts, etc. v. Lowden, supra.* The carrier which assists a union in this endeavor is engaging in activity just as unlawful as those sponsoring a company-dominated union. Cf. *Virginia Electric & Power Co. v. NLRB, supra.*

If the restriction as applied to petitioner is contrary to the right of individual revocation as contained in Section 2, Eleventh, it cannot be maintained by respondents that the individual is bound by the unlawful negotiations of his collective bargaining rep-

[22] Certified by petitioner as part of the record on petition for certiorari herein; see also Brief of Respondent BRT in Opposition to Petition for Writ of Certiorari, p. 11.

resentative.[23] A restriction, the proponents of which can only justify on the basis of a veto power over the individual employee's right of revocation and free selection of other bargaining agents, has no basis in the law, and, therefore, it should be rejected.

If restrictions and conditions on the right of revocation of dues assignments are open to negotiation between rail carriers and rail unions, then new controls on the right of individual employees have been introduced in this field. A union naturally seeks perpetuation of its status. The carrier is not always disinterested and may prefer continuance of a particular union rather than to deal with some other bargaining representative whom its employees might choose. In devising such restrictions, temptation may be strong for both carriers and unions to place as many obstacles as possible in the path of the individual employees desiring revocation of dues assignments or a change in union representation.

If the courts are to pass in each case on the question of whether the particular restriction is "reasonable" or "unreasonable" and a "burden," an endless chain of litigation is in prospect. Congress did not intend the Railway Labor Act as an invitation to extensive litigation in the courts over the merits or demerits of every condition which ingenuity can devise in each check-off agreement. Congress sought only to protect the rights of the individual employee by providing a definite and simple procedure by which he might ex-

[23] Cf. *Shine v. John Hancock Mutual Life Ins. Co.; Braddom v. Three Point Coal Co., supra.*

press his individual desire to discontinue dues deductions and to change union membership without being bound to continue to pay dues to a union which has theretofore negotiated a check-off agreement with his employer. By the terms of the Act these rights may not be qualified or hedged about with restrictions by agreement between carriers and unions.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

Dated, San Francisco, California,
November 26, 1958.

Respectfully submitted,

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(Appendix Follows.)